No. 11828

IN THE
UNITED STATES
CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT

SEATTLE STAR, a corporation and E. L. SKEEL, Liquidating Trustee, *Appellants*,

vs.

JOHN RANDOLPH and PHILIP W. TAYLOR, *Appellees.*

UPON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION

HONORABLE JOHN C. BOWEN, *Judge*

BRIEF OF APPELLANTS

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JURISDICTIONAL STATEMENT

This is an appeal from the final judgment entered in favor of the appellees in the above entitled case by the United States District Court for the Western District of Washington, Northern Division. The action (R. 2) was one brought on behalf of two re-employed veterans under the provisions of the Selective Training and Service Act of 1940 (Title 50 U.S.C.A. App., Sec. 301, *et seq.*). Section 8(e) of that Act (Title 50 U.S.C.A. App., Sec. 308(e) provides as follows:

> "In case any private employer fails or refuses to comply with the provisions of subsection (b)

> or subsection (c), the District Court of the United States for the district in which such private employer maintains a place of business shall have power, upon the filing, of a motion, petition, or other appropriate pleading by the person entitled to the benefits of such provisions, to specifically require such employer to comply with such provisions, and, as an incident thereto, to compensate such person for any loss of wages or benefits suffered by reason of such employer's unlawful action. * * *"

This appeal from that judgment is taken pursuant to the provisions of 28 U.S.C.A., Sec. 225, which provides that:

> "(a) The circuit courts of appeal shall have appellate jursidiction to review by appeal or writ of error, final decisions—
> "First. In the district courts, in all cases save where a direct review of the decision may be had in the Supreme Court under Section 345 of this title."

STATEMENT OF THE CASE

The facts of this case have been stipulated by counsel (R. 15 to 20). The significant facts are as follows: Appellee John Randolph first entered the employ of the Seattle Star on or about September 24, 1936, and was thereafter continuously employed by the Star until January, 1942, when he was inducted into the United States Army. Upon his honorable discharge from the Army, Randolph was re-employed by the Star and restored to his former position on January 14, 1946.

Appellee Philip W. Taylor first entered the employ of the Seattle Star on or about February 2, 1942, and was thereafter continuously employed by the Star until August, 1942, when he was inducted into the United States Army. Upon his honorable discharge from the Army, Taylor was re-employed by the Star and restored to his former position on February 8, 1946.

At the time of the induction into the Armed Forces of each of the Appellees there was, in effect, between the Seattle Star and the Seattle Newspaper Guild, Local 82, of the American Newspaper Guild, a contract which included provisions for severance pay. This conract (R. 20) called for the payment of severance pay computed on the basis of the period of full time continuous employment of the employee with the Scripps League (Seattle Star) but provided that time spent on leave of absence should not count as service time in the computation of that severance pay.

The Star ceased publication on August 13, 1947, and at that time Randolph and Taylor, along with a great many other employees, were relieved from further employment. Each employee was at that time paid severance pay on the basis of his years of full time continuous employment with the Seattle Star, but in the computation of the full time continuous employment of the Appellees, Randolph and Taylor, the time which they spent in the Armed Forces was not included.

Both Appellees claimed that by virtue of the Selective Training and Service Act of 1940, additional

severance pay was due them for the time which they had spent in the Armed Forces. Upon the rejection of their claims by Appellants this suit was brought on behalf of the Appellees by the United States District Attorney. The trial court entered final judgment for Randolph and against the Appellants in the sum of $1,543.50, and for Taylor and against Appellants in the sum of $451.01, the court holding that under the Selective Training and Service Act of 1940 the time-in-service of veterans must be included in the computation of their severance pay.

SPECIFICATIONS OF ERROR

The district court erred in the following respects:

(1) Entering judgment in favor of the Appellees, Randolph and Taylor for recovery against the defendants;

(2) Refusing to dismiss the action of the plaintiffs below (appellees); and

(3) Refusing to enter judgment in favor of the defendants below (appellants).

SUMMARY OF ARGUMENT

The Selective Training and Service Act of 1940 provided that a re-employed veteran is entitled to the various benefits offered by the employer in accordance with the established practices relating to employees on leave of absence as of the time of the induction of the re-employed veteran. The contract between the Seattle Star and the bargaining agent of its employees, including the Appellees, provided that time on leave of absence should not be included in the compu-

tation of severance pay. We submit, therefore, that time spent in the Armed Forces should likewise not be included in the computation of severance pay.

If it be held, however, that a veteran occupies a preferential position upon his return and that his time in service must be included in the computation of severance pay so long as he occupies that position, we submit that the Appellees lost their preferential position upon the termination of the first year of their re-employment and that, as a result, they must be treated no differently from non-veterans in the computation of severance pay.

ARGUMENT

I.

Under Title 50 U.S.C.A. App. Sec. 308, the Selective Training and Service Act of 1940, the Rights of Each Claimant to Employment Benefits Were Determined by the Contract in Effect Between the Seattle Star and the Seattle Newspaper Guild at the time that claimant was inducted into the armed forces.

The relevant portions of the Selective Training and Service Act of 1940 (Title 50 U.S.C.A. App. Sec. 301 *et seq.*) are as follows:

> "Sec. 308(a) Any person inducted into the land or naval forces under this Act for training and service, who, in the judgment of those in authority over him, satisfactorily completes his period of training and service * * * shall be entitled to a certificate to that effect upon the completion of such period of training and service * * *.
>
> (b) In the case of any such person who, in order

to perform such training and service, has left or leaves a position, other than a temporary position, in the employ of any employer and who

(1) receives such certificate,

(2) is still qualified to perform the duties of such position, and

(3) makes application for reemployment within forty days after he is relieved from such training and service—

(B) if such position was in the employ of private employer, such employer shall restore such person to such position or to a position of like seniority, status, and pay unless the employer's circumstances have so changed as to make it impossible or unreasonable to do so;

(c) Any person who is restored to a position in accordance with the provision of paragraph (A) or (B) of sub-section (b) shall be considered as having been on furlough or leave of absence during his period of training and service in the land or naval forces, shall be so restored without loss of seniority, shall be entitled to participate in insurance or other benefits offered by the employer pursuant to established rules and practices relating to employees on furlough or leave of absence in effect with the employer at the time such person was inducted into such forces, and shall not be discharged from such position without cause within one year after such restoration."

By virtue of the Selective Training and Service Act a returning veteran is clearly entitled to participate in benefits offered by his former employer to the employees of the latter; but—that right is not unlimited. By the express words of Sec. 308(c) the

returning veteran is entitled to participate in those benefits only in pursuance to those "rules and practices relating to employees on furlough or leave of absence" which were in effect at the time that the returning veteran was inducted into the Armed Forces.

It is manifest therefore that one can determine the benefits to which a returning veteran is entitled only by determining the benefits to which he would have been entitled had he not been inducted into the Armed Forces but rather had taken a furlough or leave of absence. If the time spent by him as a civilian employee on furlough or leave of absence would have been counted in determining his rights to benefits, then the time spent by him in the Armed Forces would likewise be counted in determinng his rights to benefits. If the time spent by him as a civilian on furlough or leave of absence would have been disregarded in determining his rights to benefits, then the time spent by him in the Armed Forces must likewise be disregarded.

It is difficult to rephrase Sec. 308(c) so as to clarify the intent of Congress. The need for clarification, as a matter of fact, is absent, for in this section there is not the slighest trace of ambiguity. By its terms the rights of a returning veteran are declared to be exactly equal, no greater, no less, than the rights of an employee who has taken a furlough for an equal period of time. The statute establishes an equation of rights and in determining the rights of a returning veteran the terms of that equation must be strictly

observed lest the intent of Congress be defeated. In awarding judgment to the plaintiffs in this action, the trial court said (R. 31):

> "* * * I do not see how it is possible for these plaintiffs, who are war veterans, to enjoy the other benefits offered by the employers to other employees if the plaintiffs are denied this particular benefit of severance pay secured to them by the statute on a parity with other employees who were continuously on active duty with the employer during the period of time that the plaintiff's were in the war service."

We submit, however, that this statement on the part of the trial court indicates a misapprehension on its part of the statutory provision made for the returning veteran. The lower court indicates the statute was designed to create a parity between returning veterans and the employees "who were continuously on active duty with the employer" during the period of military service of the returning veteran.

Analysis of the statute reveals, however, as we have shown above, that the statute was designed not to create a parity between the returning veteran and employees "who were continuously on active duty with the employer" but rather to create a parity between the returning veterans and employees who may have been on furlough or leave of absence for an equivalent period of time. The words of the statute permit of no other interpretation.

Other courts in construing this statute have not disregarded the words of Sec. 308(c) making the rights of a returning veteran to various benefits

equivalent to the rights of an employee on furlough or leave of absence. For example, in *Lord Manufacturing Company v. Nemez* (1946) 65 F. Supp. 711, at page 725 the court said:

> "* * * A person who entered military service shall be considered as having been on furlough or leave of absence during his period of active military service * * *."

In *Trailmobile Company v. Whirls* (1946) 154 F. (2d) 866 at page 869 the court stated:

> "* * * the person so restored to such position shall be considered as having been on furlough or leave of absence during his period of military service and shall be so restored without loss of seniority."

In *Fishgold v. Sullivan Drydock and Repair Corporation* (1946) 154 F.(2d) 785 at page 792 the dissenting opinion of Chase, C.J., stated:

> "* * * the position carries with it the right of the former employee thus re-employed to be treated as though he had been 'on furlough or leave of absence during his period of training and service in the land or naval forces' * * *."

In *Feore v. North Shore Bus Company* (1947) 161 F.(2d) 552 at page 554, the court said:

> "Sec. 8(c) of the Act requires that the veteran be considered as on furlough or leave of absence during his period of training and service."

In *Hall v. Union Light, Heat & Power Company* (1944) 53 F. Supp. 817 at page 818 the court said:

> "The Act uses the language that they shall be considered as having been on furlough or leave of absence during the period of training and service."

And the Supreme Court of the United States in *Fishgold v. Sullivan Drydock and Repair Corporation* (1946) 328 U.S. 275, 90 L. ed. 1230 at page 1240, stated:

> "He shall be 'restored without loss of seniority' and be considered 'as having been on furlough or leave of absence' during the period of his service for his country, with all of the insurance and other benefits accruing to employees on furlough or leave of absence."

It is thus to be seen that it has been repeatedly held that the words "pursuant to established rules and practices relating to employees on furlough or leave of absence" are not without significance in the Act, yet the holding of the trial court in the case at bar accords to those words no significance whatsoever.

When the courts were first confronted with the task of construing the Selective Training and Service Act of 1940, there was, it is true, a diversity among the lower courts as to whether the returning veteran was to be accorded a "super-seniority," that is, seniority greater than that of the non-veteran employees having at the time of the veteran's induction the same or higher seniority. This problem has twice been before the United States Supreme Court and in each case that court held that, though a veteran does not lose in relative seniority by reason of his absence in military service, neither does he gain in relative seniority by reason of that service. The first case was *Fishgold v. Sullivan Drydock and Repair Corporation* (1946) 328 U.S. 275, 90 L. ed. 1230. In that case the petitioner was a veteran who, upon application, had

been reinstated in the employ of the company after his return from service. Because of an insufficiency of work to be done, petitioner was laid off on nine separate days, although non-veterans, having a higher seniority than petitioner, were retained. Petitioner thereupon sued to obtain compensation for those days upon which he was not permitted to work. In denying the petitioner's claim, the court said at 90 L. ed. 1240:

> "* * * We would distort the language of these provisions if we read it as granting the veteran an increase in seniority over what he would have had if he had never entered the Armed Services * * * No step-up or gain in priority can be fairly implied. Congress protected the veteran against loss of ground or demotion on his return. The provisions for restoration without loss of seniority to his old position or to a position of like seniority mean no more."

And at 90 L. ed. 1242 the court spoke as follows:

> "Congress recognized in the Act the existence of seniority systems and seniority rights. It fought to preserve the veterans' rights under those systems and to protect him against loss under them by reason of his absence. There is indeed no suggestion that Congress sought to sweep aside the seniority system. What is undertook to do was to give the veteran protection within the framework of the seniority system plus a guarantee against demotion or termination of the employment relationship without cause for a year."

The opinion in *Fishgold v. Sullivan Drydock and Repair Corporation* hence clearly repudiates the idea that the rights of a returning veteran are to be de-

termined without reference to the seniority system already existent in the place of his employment. Rather are his rights established in reference to, and within the framework of, that seniority system.

The second case before the United States Supreme Court involving the doctrine of "super-seniority" was *Trailmobile Company v. Whirls* (1947) 331 U.S. 40, 91 L. ed. 939. That case began as a suit by an employee to enjoin a change in the seniority status allegedly accorded to him by the Selective Training and Service Act. It appears that the Trailmobile Company and the Highland Body Manufacturing Company, a wholly owned subsidiary of the Trailmobile Company, consolidated on January 1, 1944, and by agreement between the certified bargaining agent of the employees and the Trailmobile Company, as the continuing employer, the seniority of all the employees of the Highland employees was to recommence as of the date of consolidation. Whirls, who returned from service in May, 1943, claimed, however, that the Selective Training and Service Act barred the company from changing his relative seniority status, despite the collective bargaining agreement entered into by it with the bargaining representative of the employees. It was his contention that upon re-employment he was entitled to retain indefinitely his prewar plus service-accumulated seniority. In again denying to a veteran a "super-seniority," which he claimed, the Supreme Court said at 91 L. ed. 949:

> "* * * If this extraordinary statutory security were to be extended beyond the statutory year, the restored veteran would acquire not simply

equality with non-veteran employees having identical status as of the time he returned to work. He would acquire indefinite statutory priority over non-veteran employees, a preferred status which we think not only inharmonious with the basic Fishgold rationalization, but beyond the protection contemplated by Congress."

At 91 L. ed. 950 the court said:

"Whirls was treated exactly as were other employees in his group having the same seniority and status as he had on the date of his re-employment. There was no discrimination against him as a veteran or otherwise than as a member of that group. Both groups, the former Trailmobile employees and the former Highland employer, who compared his group, contained veterans and non-veterans in large numbers. Both contained veterans in active service and re-employed veterans when the collective agreement was made. Whirls was treated exactly as all other members of his group, the ex-Highland employees, veterans and non-veterans alike."

In light of the fact that the Supreme Court has twice committed itself to the doctrine that the returning veteran has not been accorded "super-seniority" by Congress, it must be taken, as established, that in order to comply with the Selective Training and Service Act of 1940, an employer must not discriminate against the returned veterans in his employ; but—he is under no obligation to discriminate in *favor* of those veterans. The employer's obligation is but an obligation to accord the identical treatment to veterans as accorded by him to non-veterans. In the words of the statute, the returning veteran is "entitled to partici-

pate in insurance or other benefits offered by the employer pursuant to established rules and practices relating to employees on furlough or leave of absence in effect with the employer at the time such person was inducted into such forces." The Congress made the right of the returning veteran dependent upon his rights as of the time of his induction. To determine the rights of a veteran upon his return to employment, one must hence first determine the "established rules and practices relating to employees on furlough or leave of absence" in effect at the time of his induction.

II.

Under the contract in effect between the Seattle Star and the Seattle Newspaper Guild at the time of induction of each claimant, the time spent by any employee of the Seattle Star in the armed forces was not to be included in the computation of severance pay for that employee.

The plaintiff John Randolph was inducted into the Armed Forces of the United States in January, 1942 (R. 16). The plaintiff Philip W. Taylor was inducted into the Armed Forces of the United States in the month of August, 1942 (R. 18). From October 5, 1940 to October 4, 1942, there was in effect a contract between the Seattle Star and the Seattle Newspaper Guild, Local 82, of the American Newspaper Guild, affiliated with the Congress of Industrial Organizations (R. 17).

Sec. 4 and Sec. 5 of Article VIII (R. 22) of that contract provide as follows:

"4. In computing severance pay the length of

service of the employee shall be the total years of full time continuous employment in the Scripps League.

"5. By written agreement with the Publisher, employees may be granted leaves of absence without prejudice to continuing service in the determination of severance pay, but time spent on such leave shall not count as service time."

The quoted sections make clear the fact that severance pay is dependent upon the total years of full time continuous employment and — that time spent upon leave of absence is *not* to be counted in the computation of the period of full time continuous employment. Had a non-veteran employee entered the employ of the Seattle Star on January 1, 1940, worked continuously until January 1, 1944, taken a leave of absence until January 1, 1946, and then resumed full time work until the time of his severance on August 13, 1947, it is clear that his two years on leave of absence would not have been counted in the computation of his period of employment for severance pay purposes. The contract between the Guild and the Star can be read in no other way. There is within it no latent ambiguity requiring, or permitting, judicial construction. The contract states:

"* * * Employees may be granted leaves of absence * * * but time spent on such leave(s) shall not count as service time."

The words are simple; their meaning clear. Because of them a non-veteran could not possibly claim that time spent by him on leave of absence should be

counted in the computation of his full time service for severance pay.

The parties to the Newspaper Guild - Seattle Star contract anticipated leaves of absence on the part of employees, and that contract stipulated the exact effect that such leaves of absence were to have upon the computation of severance pay. Certainly the provisions of that contract became the "established rules" as regards severance pay upon its execution by the contracting parties.

It follows, we submit, that a returning veteran is in no more favored position to claim that his "time in service" should be counted in the computation of severance pay than is a non-vetern to claim that his "time on leave of absence" should be so counted. The contract bars not only the non-veteran; but, by virtue of the Selective Training and Service Act, it likewise bars the veteran. Permitting the veteran to count his "time in service" towards severance pay but forbidding the non-veteran to count his "time on leave of absence" would be according to the veteran the very "super-seniority" which has been twice condemned by the United States Supreme Court.

The provisions of the Newspaper Guild - Seattle Star contract do not offend the provisions of Title 50 U.S.C.A. App. Sec. 308(c). On the contrary, they set out the very "benefits offered by the employer" and establish the very "rules and practices relating to employees on furlough or leave of absence" of which the statute speaks.

We have been unable to find among the reported cases any in which the precise point here at issue has been presented, but a decision which lends strong support to the appellant in the case at bar was rendered by the United States Circuit Court of Appeals for the Third Circuit in the case of *Gauweiler v. Elastic Stop Nut Corporation of America* (1947) 162 F.(2d) 448. In that case the plaintiff was a returned veteran. During his absence in the Armed Forces, a new contract was negotiated by the employer and the authorized bargaining agent for its employees. Under the terms of that contract, union officials became entitled to a higher seniority than employees who were not such officials. After his reemployment, the veteran was laid off during a period of slack work but a union official, having less seniority in point of service with the employer, was retained. To this the veteran objected and filed an action for loss of wages and for a declaration of reemployment rights under the Selective Training and Service Act.

In holding that the employer had not acted in contravention of the Selective Training and Service Act, the court said at 162 F.(2d) 451:

> "All this (the statements of the Supreme Court in the Fishgold and Trailmobile cases) mean, we think, that what the Act gives to the veteran is the right not to lose his position or seniority by virtue of his absence in military or naval service. He is protected while away to the same extent as if he had been either continuously on the job in the plant or away on furlough or leave of absence for some personal reason.
>
> "Let us consider briefly what our employee's

seniority rights would have been, had he remained continuously employed in the plant, without having been called away to war service. He would, of course, have had his rights fixed as to seniority, working conditions, pay, and the rest, by terms of the contract entered into between the recognized bargaining agent and the employer * * *.

"It is to be emphasized that in our case there is no suggestion of discrimination against veteran employees. The significance of that point was mentioned by the Supreme Court in the *Trailmobile* case, 67 S. Ct. 982 at page 991. Discrimination would obviously change the whole picture. If during the absence of some of the employees at war, those remaining got together and created union offices for themselves so that everyone had an office, and then proceeded to provide top seniority for union offices, a court would have no trouble in seeing that this device was simply an effort to discriminate against absentee fighting men. No such point is involved in the problem before us * * *.

"The considerations above stated bring us to the conclusion that the employee absent in war service is bound by the non-discriminatory arrangement made between the bargaining unit and the employer during his absence. This fits precisely with the concept of rights under the statute enunciated by the Supreme Court in Fishgold and reiterated in Trailmobile. The veteran does not lose by his absence. He simply remains as if he were on the job and subject to the well established and accepted routine of collective bargaining, so far as this particular right of seniority is concerned."

Certainly if a veteran is bound by non-discriminatory contractual provisions entered into by his bargaining representative and his employer during his absence in the armed service, he is *a fortiori* bound by such non-discriminatory provisions already in effect, as in the case at bar, prior to his induction. The "leave of absence" provision in Article VIII of the Newspaper Guild-Seattle Star contract was manifestly non-discriminatory and, being so, it must be deemed to be controlling in this controversy.

We submit that not only by the plain words of Congress but by the authority of the decided cases, the appellees are barred from counting their "time in service" in the computation of severance pay.

III.

The rights given to a reemployed veteran by Title 50 U.S.C.A. App. Sec. 308 (Selective Training and Serice Act of 1940) are limited in time, and in the instant case expired prior to the termination of employment of the appellees.

From the foregoing it is clear that if the returning veteran has been given rights equal to, but no greater than, the rights of a non-veteran of like seniority, the present claimants cannot count their "time in service" in the computation of severance pay. If it be held by this court, however, that a returning veteran has the right not only to equal, but to greater, privileges than a non-veteran of like seniority, then we submit that such "super-seniority" terminates at the expiration of one year after his return. Such was the holding of the Supreme Court in *Trailmobile Com-*

pany v. Whirls, supra. In that case the plaintiff, a veteran, returned from service in May, 1943. Thereafter, as had already been set forth in this brief, his former employer, the Highland Body Manufacturing Company, was consolidated with the Trailmobile Company. An agreement was then entered into by the Trailmobile Company and the authorized bargaining representative of the employees, and this agreement provided that the seniority of all former Highland employees should commence as of January 1, 1944, the date of consolidation, regardless of the dates of their original employment by Highland. On or about September 3, 1945, Whirls was transferred from the painting to the stock department and the company threatened to reduce his pay from $1.05 to 83c per hour. Whirls then brought a suit to enjoin that threatened decrease in pay and change in seniority status. The United States Supreme Court specifically confined its attention to the consideration of but one question, that question being framed by the court at 91 L.ed. 945 as follows:

> "We turn therefore to consideration of the sole question presented on the merits, namely whether under Sec. 8 the veteran's right to statutory seniority extends indefinitely beyond the expiration of the first year of his reemployment, being unaffected by that event as long as the employment itself continues."

The Government on behalf of the plaintiff Whirls, contended that, whereas the statutory security against discharge terminated at the end of one year, the statutory protection of the "other rights" of a veteran

continued for the life of the job itself. The court however held against this contention of the Government and said at 91 L.ed. 948:

> "It is therefore clear that Congress did not confer the rights given as incidents of the restoration simply to leave the employer free to nullify them at will, once he had made it. Equally clearly Congress did not create them to be operative for the vaguely indefinite and variously applicable period of a reasonable time. But we cannot agree that they were given to last as long as the employment continues, unaffected by the expiration of the one year period."

At 91 L.ed. 949 the court went on to state:

> "For the statutory year indeed this meant that the restored rights could not be altered adversely by the usual processes of collective bargaining or of the employer's administration of general business policy. But if this extraordinary statutory security were to be extended beyond the statutory year, the restored veteran would acquire not simply equality with non-veteran employees having identical status as of the time he returned to work. He would acquire indefinite statutory priority over non-veteran employees, a preferred status which we think not only inharmonious with the basic Fishgold rationalization but beyond the protection contemplated by Congress."

And finally at 91 L.ed. 950 the court said:

> "The only question here and the only one we decide is that Sec. 8(c) although giving the reemployed veteran a special statutory standing in relation to 'other rights,' as defined in the

> Fishgold case, during the statutory year, and creating to that extent a preference for him over non-veterans, did not extend that preference for a longer time * * *.
>
> * * * * * * * * * * *
>
> "We find it unnecessary therefore to pass upon petitioner's position in this case, namely, that all protection afforded by virtue of Sec. 8(c) terminates with the ending of the specified year. We hold only that so much of it ends then as would give the reemployed veteran a preferred standing over employees not veterans having identical seniority rights as of the time of his restoration. We expressly reserve the decision upon whether the statutory security extends beyond the one year period to secure the reemployed veteran against impairment in any respect of equality with such a fellow worker."

The court thus makes it clear beyond argument that the expiration of one year after reemployment terminates any *preferred* standing which a returning veteran may have over a non-veteran of identical seniority. After that time, they resume a position of absolute equality.

In the case at bar, it has been shown that a non-veteran employee of the Seattle Star could not count time on leave in the computation of his severance pay. If the claimants then are permitted to count their "time in service" in the computation of severance pay, that privilege would have to be based upon a preferential standing accorded to them by the Selective Training and Service Act of 1940. Though we deny that claimants ever had such a preferential

position as regards severance pay, we submit that their preferential position, if any ever existed, did not extend beyond the expiration of one year after reemployment.

Claimant Randolph reentered the employment of the Seattle Star on January 14, 1946 (R. 4); on August 13, 1947, his employment was terminated. Claimant Taylor reentered the employment of the Seattle Star on February 8, 1946 (R. 8); on August 13, 1947, his employment was terminated. At their time of severance from employment with the Seattle Star, neither of the claimants was hence within the first year of his reemployment. We submit therefore that even if the Selective Training and Service Act of 1940 accorded to claimants a preferential standing over non-veterans, that preferential standing had terminated long before their final severance of employment and that in computing the severance pay of the claimants, no distinction should, nor legally can, be made between them and non-veterans.

CONCLUSION

We respectfully submit that the trial court was in error in its application of the law to the facts, as stipulated, and that in consequence the judgment of the trial court should be reversed.

Respectfully submitted,

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